

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to licensure and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 70, “Lead-Based Paint Activities,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 135.105A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 272C and section 135.105A and 2020 Iowa Acts, House File 2627.

*Purpose and Summary*

The proposed amendments in Chapter 70 implement 2020 Iowa Acts, House File 2627; standardize when a certification can be denied due to criminal convictions; and provide an opportunity for an eligibility determination.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 30, 2021. Comments should be directed to:

Kane Young  
Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [kane.young@idph.iowa.gov](mailto:kane.young@idph.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of "Complete criminal record," "Conviction" and "Disqualifying offense" in rule **641—70.2(135)**:

*"Complete criminal record"* includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

*"Conviction"* means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. "Conviction" includes Alford pleas and pleas of nolo contendere.

*"Disqualifying offense"* means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a certified profession, or (2) the circumstances under which an offense was committed are circumstances customary to a certified profession.

ITEM 2. Adopt the following **new** subrule 70.5(3):

**70.5(3)** *Use of criminal convictions in eligibility determinations and initial licensing decisions.*

*a. License application.* Unless an applicant for licensure petitions the department for an eligibility determination pursuant to paragraph 70.5(3) "b," the applicant's convictions will be reviewed when the department receives a completed certification application.

(1) An applicant must disclose all convictions on a certification application. Failure to disclose all convictions is grounds for certification denial or disciplinary action following certification issuance.

(2) An applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the certification application to be considered complete.

(3) An applicant must submit as a part of the certification application all evidence of rehabilitation that the applicant wishes to be considered by the department.

(4) The department may deny a certification if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

(5) An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for certification.

(6) Any application fees paid will not be refunded if the certification is denied.

*b. Eligibility determination.* An individual who has not yet submitted a completed certification application may petition the department for a determination of whether one or more of the individual's convictions are disqualifying offenses that would render the individual ineligible for certification. An individual with a conviction is not required to petition the department for an eligibility determination prior to applying for certification. To petition the department for an eligibility determination of whether one or more of the petitioner's convictions are disqualifying offenses, a petitioner shall submit all of the following:

- (1) A completed petition for eligibility determination form;
- (2) The complete criminal record for each of the petitioner's convictions;
- (3) A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the department should find the petitioner rehabilitated;
- (4) All evidence of rehabilitation that the petitioner wishes to be considered by the department; and

(5) Payment of a nonrefundable fee of \$25.

*c. Appeal.* A petitioner deemed ineligible or an applicant denied a certification because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the department's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The department's rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the department's written decision will become a final order.

(1) An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the department elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

(2) The office of the attorney general shall represent the department's initial ineligibility determination or certification denial and shall have the burden of proof to establish that the petitioner or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

(3) A petitioner or applicant must appeal an ineligibility determination or certification denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or certification denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

*d. Future petitions or applications.* If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a certification application prior to the date specified in the final order. If a final order denies a certification application, the applicant may not submit a subsequent certification application or a petition for eligibility determination prior to the date specified in the final order.

ITEM 3. Amend **641—Chapter 70**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 135.105A, 272C.4 and 272C.12.